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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

In Re:)	Case No. 14-21908
)	
Edward Toledo Monson)	Chapter 13
Jeanice G. Monson,)	
)	Judge Joel T. Marker
Debtor(s).)	
)	

RULE 9024 MOTION FOR RELIEF FROM ORDER OF DISMISSAL

Debtor Edward Toledo Monson, by and through undersigned counsel, respectfully move, under Fed. Bankr. R. 9024, on the basis of excusable neglect, that the Court vacate its December 18, 2015, Order of dismissal, and in support thereof, asserts as follows:

BACKGROUND

1. Debtors filed their petition on March 3, 2014.
2. Debtors' Chapter 13 Plan was confirmed on November 12, 2014, requiring the Debtors to contribute \$1,469 each month.
3. The Debtors made payments in April, May, June, and September 2014, but did not make timely payments for July and August 2014.
4. Following the unexpected death of the Joint Debtor Jeanice Monson on September 21, 2014, the Debtor temporarily shifted his focus from this case to caring for the couple's

two young children, and he neglected to make plan payments in October and November 2014.

5. On November 19, 2014, the Chapter 13 Trustee moved for dismissal due to non-payment of the plan payments.
6. On December 2, 2014, the Chapter 13 Trustee moved for dismissal for failure to comply with the Order of Confirmation (claims review), and listed the objection deadline as December 26, 2014.
7. The Debtor, mistakenly relying on the December 26, 2014, deadline, wrongly believing that it applied to the Trustee's November 19, 2014, motion to dismiss (despite the different objection deadline stated on that motion), made five plan payments amounting to \$7,345 on December 23, 2014.
8. However, because the objection deadline already had passed, the Court had dismissed this case on December 18, 2014.
9. The Debtor has completed his claims review and filed the declaration regarding that review.

ARGUMENT

Under Fed.R.Civ.P. 60(b), made applicable in bankruptcy cases by Rule 9024, the Court may, in its discretion, relieve a party from the effects of a final judgment or order for "mistake, inadvertence, surprise, or excusable neglect...." A court's treatment of Civil Rule 60(b) is not intended to be rigid, but instead requires the court to equitably consider all relevant circumstances surrounding a party's errors or omissions. *Pincay v. Andrews*, 389 F.3d 853, 856, 860 (9th Cir.2004).

Here, the number of additional responsibilities the Debtor was forced to take on in his life,

including the daily care and supervision of his young children, as well as the emotion trauma of the sudden and unexpected death of the Debtor's spouse, and the Debtor's misinterpretation of the notices he received concerning the objection deadlines on the Chapter 13 Trustee's motions to dismiss are factors that excuse the Debtor's neglect in responding timely to the Motion to Dismiss for non-payment. Moreover, the fact that the Debtor made the plan payments to bring his case current prior to the deadline that he understood to apply to the motion to dismiss shows his intent and ability to go forward with the case, such that there would be no prejudice to creditors should the Court vacate the order of dismissal.

CONCLUSION

For the reasons set forth above, Debtor respectfully request that the Court grant his motion to vacate the December 18, 2014, Order of Dismissal.

DATED this 23rd day of January, 2015.

JLJ LAW GROUP, PLLC

/s/ Hal Armstrong
Hal Armstrong, Attorney for Debtors

CERTIFICATE OF SERVICE–MAIL, OTHER

I hereby certify that on January 23, 2015, I caused to be served a true and correct copy of the foregoing document as follows:

Mail Service to Entire Matrix – By regular first class United States mail, postage fully pre-paid, addressed to all parties who did not receive electronic service as set forth herein listed on the Official Court Mailing Matrix dated January 23, 2015, attached hereto.

ECF:

- Kevin R. Anderson tr ecfmail@ch13kra.com, lneebling@ch13kra.com
- Harold H. Armstrong harmstrong@jljlawgroup.com, crees@JLJLawGroup.com
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- Gale K. x3Francis txbk13@utah.gov
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/s/ Hal Armstrong
Hal Armstrong, Attorney for Debtors

Label Matrix for local noticing
1088-2
Case 14-21908
District of Utah
Salt Lake City
Fri Jan 23 06:36:44 MST 2015

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P. O. BOX 163229
FORTH WORTH, TEXAS 76161-3229

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Student Loans & Receivables
4600 Redwood Road
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Bonneville Billing and Collections, Inc.
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Ogden, UT 84415-0612

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Express Recovery Services, Inc.
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HD Financial
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Internal Revenue Service
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N.A.R., Inc.
5225 Wiley Post Way, #410
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Revenue Cycle Solutions
P.O. Box 361230
Birmingham, AL 35236-1230

Santander Consumer USA, Inc.
Attention: Bankruptcy Dept.
P.O. Box 560284
Dallas, TX 75356-0284

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Attn Bankruptcy Unit
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CBE Group
c/o Diversified Collection Services, Inc
P.O. Box 9046
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Department of Veteran Affairs
Overpayment of GI Bill Benefits
P.O. Box 8888
Muskogee, OK 74402-8888

GE Capital Corp.
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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Portfolio Recovery Associates, LLC
POB 41067
Norfolk, VA 23541

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